

## NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

### NOTICE OF EXEMPT RULEMAKING

#### TITLE 8. EMERGENCY AND MILITARY AFFAIRS

#### CHAPTER 3. DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS

#### DIVISION OF MILITARY AFFAIRS

#### PREAMBLE

1. **Sections affected:**

Article 1	<u>Rulemaking action</u>
R8-3-101	Repeal
R8-3-102	Repeal
R8-3-103	Repeal
R8-3-104	Repeal
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 26-102

Implementing statute: A.R.S. § 26-127

Article v, § 3 of the Arizona Constitution establishes the Governor as the Commander-in-Chief of the Arizona National Guard. A.R.S. § 26-101 confirms this relationship, Opinion I87-061 (R86-172) of AG.
3. **The effective date of the rules:**

February 3, 1998
4. **A list of all previous notices appearing in the Register addressing the exempt Rule:**

Notice of Rulemaking Docket Opening: 3 A.A.R. 2519, September 12, 1997.

Notice of Proposed Rulemaking: 3 A.A.R. 2546, September 19, 1997.
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: John A. McMurdie

Address: Department of Emergency and Military Affairs  
5636 East McDowell Road  
Phoenix, Arizona 85008-3495

Telephone: (602) 267-2730

Fax: (602) 267-2903
6. **An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:**

The Rules in Title 8, Chapter 3, Article 1 are being repealed. The rules as they currently stand provide for a board procedure to determine the retainability of National Guard Officers who have attained 20 years of service. Since the rule was 1st published, different National Guard procedures have been implemented which make it unnecessary to have these rules. These rules have never been enforced.
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.
8. **The summary of the economic, small business and consumer impact:**

Not required per A.R.S. § 41-1055(D)(3); this repeal will reduce administrative requirements.
9. **A description of the changes between the proposed rules, including supplemental notices and final rules (if applicable):**

None.

*Arizona Administrative Register*  
**Notices of Exempt Rulemaking**

10. A summary of the principal comments and the agency response to them:  
No public comment received.
11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
None.
12. Incorporations by reference and their location in the rules:  
None.
13. Was this rule previously adopted as an emergency rule?  
No.
14. The full text of the rules follows:

**TITLE 8. EMERGENCY AND MILITARY AFFAIRS**

**CHAPTER 3. DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS**

**DIVISION OF MILITARY AFFAIRS**

**ARTICLE 1. RETENTION AND SEPARATION POLICY  
FOR MEMBERS OF THE ARMY AND AIR NATIONAL  
GUARD OF ARIZONA**

Section

- R8-3-101. Definitions Repealed  
R8-3-102. Policy and Procedure Repealed  
R8-3-103. No Vested Rights Repealed  
R8-3-104. Reappointment of Federal Technicians Repealed

**ARTICLE 1. RETENTION AND SEPARATION POLICY  
FOR MEMBERS OF THE ARMY AND AIR NATIONAL  
GUARD OF ARIZONA**

**R8-3-101. DEFINITIONS Repealed**

- A.** "National Guard of Arizona" means Army and Air Commissioned Officers, Warrant Officers and enlisted personnel who are members of the state's federally recognized units.
- B.** "Federally recognized units" means those units recognized by the Secretary of the Army or Air Force as meeting the qualifications prescribed by federal law.
- C.** "The Adjutant General" means the person described in ARS § 26-101.
- D.** "Commissioned officer" means a person commissioned by proper authority to hold a grade beginning with Second Lieutenant through the grade of General.
- E.** "Warrant officer" means a person appointed by proper authority to hold a grade of Warrant Officer 1 through grade Chief Warrant 4.
- F.** "Designated representative" means the officer holding the position of Commander of Troops, Army National Guard or Commander, Air National Guard, each of whom command all members within their respective services in the National Guard of Arizona.
- G.** "Commanders" means those individuals assigned to command positions in the military chain of command.
- H.** "Supervisors" means those assigned individuals in intermediate technician or military position having supervisory responsibility.
- I.** "Enlisted personnel" means a person enlisted and holding a pay grade between E-1 and E-9.
- J.** "Technician employee of the National Guard" means a full-time civilian employee of the National Guard of Arizona whose salary is paid in full directly by the Federal Government or state.
- K.** "Noncompatible position" means a technician employee's position the duties of which do not closely relate to his or her military duties, is not performed in the same unit to which

assigned militarily, or the grade of which is not at least equal to the military grade specified under federal law for the technician position.

- L.** "Category A" means federal technician employees of the National Guard; personnel on active duty tours under Titles 10 or 32, U.S. Code, who have served in the grade held upon entry of said tour for at least four years; and state employees of the Arizona Division of Military Affairs.
- M.** "Category B" means all National Guard personnel not included in Category A.
- N.** "Creditable years service" means satisfactory years of assignment in any component of the Armed Forces of the United States.
- O.** "Notice of Appointment" means a notification to a member of the National Guard of Arizona of an appointment for a term of not less than three months of more than three years.
- P.** "Section and Retention Board" means a Board convened under regulations for the purpose of reviewing the records of every officer and enlisted individual who attains 20 or more creditable years service.

**R8-3-102. Policy and procedure Repealed**

- A.** The retention and separation of members of the National Guard of Arizona who have attained 20 or more creditable years of service shall be as directed herein. The Adjutant General shall not approve the separation of National Guard members who have attained 20 or more creditable years of service except pursuant to this Article or federal law.
- B.** There shall be two categories of personnel for the management of the retention and separation of members. These shall be Category A and Category B.
- C.** Except as otherwise provided in this Article or federal law, no Category A or Category B member shall be separated except for cause. No Category A member shall be transferred to a non-compatible position.
- D.** Members shall be separated upon expiration of the Notice of Appointment, unless a new Notice of Appointment is timely issued.
- E.** Commissioned officers normally shall not be given a Notice of Appointment beyond age 55. Category A commissioned officers who are otherwise qualified and reach age 55 may be given a Notice of Appointment for the necessary period of service to qualify for an immediate annuity. Category A commissioned officers who will not qualify for an immediate annuity prior to age 60 normally shall not be granted a Notice of Appointment beyond age 55.
- F.** Warrant officers and enlisted personnel shall not be granted a Notice of Appointment beyond age 60.

- G. All personnel shall be separated on the date of the occurrence of the event described below unless a Notice of Appointment has been tendered. The event shall be:
1. For Category A members:
    - a. ~~Who are commissioned officers, when they become 50 years of age.~~
    - b. ~~Who are warrant officers or enlisted personnel when they become 55 years of age.~~
  2. For Category B members, the day following the receipt by The Adjutant General of the member's letter of notification of eligibility for retired pay at age 60.
- H. The Adjutant General or his designated representative shall not consider the tender of any Notice of Appointment for any personnel until he has received the retention or separation recommendation of the supervisors and commanders of those personnel. The Adjutant General may accept or reject the recommendation.
- I. A Notice of Appointment shall be for a term of not less than three months nor more than three years beginning on the date of the occurrence of the event described above.
- J. Unless otherwise prohibited by this Article, a new Notice of Appointment may be tendered prior to or upon the expiration of an existing Notice of Appointment. A member shall be separated upon the expiration date of the member's Notice of Appointment unless a new Notice of Appointment is tendered to the member prior to that expiration date.

- K. The Adjutant General may delegate authority for the tender of a Notice of Appointment to the Commander of Troops, Army National Guard, or the Commander, Air National Guard, as appropriate. A new Notice of Appointment shall be issued upon change of Category A to B or B to A.
- L. All rights conferred upon a member by this Article may be waived by that member at any time.

**R8-3-103. No vested rights Repealed**

This Article at any time may be repealed in its entirety and at any time or times may be amended in any manner without violating any vested right of any person and without giving rise in any person to any claim for any kind of relief. In the event of any such repeal, The Adjutant General properly may act as if this Article never existed; and in the event of any such amendment, properly may act as if the Article always stated what it states after the amendment.

**R8-3-104. Reappointment of federal technicians Repealed**

A technician employee of the National Guard who becomes eligible for and who applies for a discontinued service annuity because of loss of military membership shall not be given a further Notice of Appointment, be reappointed, enlisted or reenlisted in the National Guard of Arizona on or after the earlier of:

1. The date of termination as a technician employee of the National Guard or
2. The date his or her resignation as a technician employee of the National Guard is submitted.